

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT LYNN JACKSON, JR., et al.,

CASE NO. C16-1282JLR

V

## Plaintiffs.

ORDER REGARDING  
PLAINTIFFS' RESPONSE TO  
THE CITY'S MOTION FOR  
SUMMARY JUDGMENT

CITY OF MOUNTLAKE  
TERRACE, et al.,

## Defendants.

The court has received Plaintiffs' response (Resp. (Dkt. # 29)) to Defendants City of Mountlake Terrace ("the City"), Brian Moss and Matt Porter's motion for summary judgment (SJ Mot. (Dkt. # 19)). In their response, Plaintiffs state that they "seek[] to drop their remaining claims pursuant to [Federal Rule of Civil Procedure] 41." (Resp. at

1     2.) Rule 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only  
 2     by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).<sup>1</sup>

3                 The court should grant a motion for voluntary dismissal unless the defendant  
 4     shows it will suffer some plain legal prejudice as a result. *See Waller v. Fin. Corp. of*  
 5     *Am.*, 828 F.2d 579, 583 (9th Cir. 1987); *Hamilton v. Firestone Tire & Rubber Co.*, 679  
 6     F.2d 143, 145 (9th Cir. 1982). A defendant may show plain legal prejudice by  
 7     demonstrating that voluntary dismissal threatens actual legal rights or may result in  
 8     extreme or unreasonable monetary or other burdens. *See Watson v. Clark*, 716 F. Supp.  
 9     1354, 1356 (D. Nev. 1989), *aff’d*, 909 F.2d 1490 (9th Cir. 1990). Factors to consider in  
 10    determining legal prejudice may include: (1) the defendant’s effort and expense in  
 11    preparing for trial; (2) the plaintiff’s excessive delay and lack of diligence in prosecuting  
 12    the action; (3) insufficient explanation of the need to take a dismissal; and (4) the fact that  
 13    the defendant has moved for summary judgment. *See Fischer v. Zespri Fresh Produce N.*  
 14    *Am., Inc.*, No. 1:07-CV-00610LJO, 2007 WL 2385074, at \*9 (E.D. Cal. Aug. 17, 2007)  
 15    (citing *Paulucci v. City of Duluth*, 826 F.2d 780, 783 (8th Cir. 1987); *Grover v. Eli Lilly*  
 16    & *Co.*, 33 F.3d 716, 718 (6th Cir. 1994); and *United States v. Outboard Marine Corp.*,  
 17    789 F.2d 497, 502 (7th Cir. 1986)).

18                 The court construes Plaintiffs’ response as a motion to dismiss their complaint  
 19     under Rule 41(a)(2), and DIRECTS the Clerk to note it as such on the court’s docket for

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 22                 <sup>1</sup> Plaintiffs are not eligible to dismiss this action by filing a notice of dismissal because  
 the remaining Defendants have filed both an answer and a motion for summary judgment. *See*  
 Fed. R. Civ. P. 41(a)(1)(A)(i). In addition, the parties have not filed a joint stipulation of  
 dismissal. *See* Fed. R. Civ. P. 41(a)(1)(A)(ii).

1 Thursday, March 30, 2017. In addition, the court notes that Defendants have a pending  
2 motion for summary judgment. (*See* SJ Mot.) Accordingly, the court ORDERS  
3 Plaintiffs to file a memorandum stating whether they seek a voluntary dismissal with  
4 prejudice or without prejudice no later than Thursday, March 23, 2017. If Plaintiffs seek  
5 a dismissal without prejudice, the court further ORDERS Plaintiffs to explain in the same  
6 memorandum why they are so entitled. *See Pace v. S. Express Co.*, 409 F.2d 331, 334  
7 (7th Cir.1969) (citing 5 Moore's Federal Practice § 41.05(1) (2d ed. 1968)) (holding that  
8 the district court properly denied dismissal without prejudice where discovery was  
9 considerably advanced and defendant's motion for summary judgment was pending).  
10 Plaintiffs shall limit their memorandum to no more than six pages.

11 The court ORDERS Defendants to respond to Plaintiffs' Rule 41(a)(2) motion to  
12 dismiss and supplemental memorandum within seven days of the filing date of this order  
13 and indicate if they have any objection to the dismissal of this case. Defendants shall  
14 limit their response to no more than six pages. Plaintiffs may file a reply to Defendants'  
15 response no later than Thursday, March 30, 2017. Plaintiffs shall limit their reply to  
16 more than three pages.

17 Dated this 21st day of March, 2017.

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JAMES L. ROBART  
United States District Judge